IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6243 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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LAXMANBHAI SHANTIBHAI CHUNARA

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA DATTA for Petitioner

MR PREMAL JOSHI, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India, challenging the order of detention, vide Annexure 'A' dated 12.6.1999 passed by the Commissioner of Police, Ahmedabad City under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as the PASA].

2. The detaining authority has filed an affidavit to substantiate the case. From the grounds of detention dated 12.6.1999, vide Annexure 'C' it appears that the detenu was found indulging in transportation of illicit liquor. The detenu was also found beating innocent persons of the locality and the passerby.

3. In the instant case, it is not necessary to go into the propriety or legality of the order of detention because the representation made by the petitioner has not

been decided by the State Government. In paragraph 18, the petitioner has made the following averments:

> "The petitioner says and submits that his wife has made a representation on 3.8.1999 to the Hon'ble Home Minister. It is duly received by the Home Minister Office, whether it is considered or not? .... "

4. Mr. Desai, learned Government Pleader appearing along with Mr. Premal Joshi, learned Assistant Government Pleader submitted that the representation has been decided, but affidavit is not filed on behalf of the State.

5. Today, in another case, being Special Civil Application No. 6241 of 1999, this Court has dealt in detail about inaction of the State in not filing replies. This Court, is, therefore, not repeating the said reasons.

6. In the case of detenu, it is required to be noted that the detenu is detained without a trial and the detaining authority as well as the State Government must satisfy the Court that appropriate actions as required under the law were taken. In the absence of affidavit, it would not be possible for the Court to say that the representation which was forwarded was decided in accordance with law. Therefore, the continued detention is required to be held as bad and illegal. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

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